

SUPREME COURT OF INDIANA

Grier v. State

868 N.E.2d 443 (Ind. 2007) · No. 49S05-0702-CR-68 · Decided June 21, 2007

SUMMARY

The Indiana Supreme Court held that police use of force on a detainee's throat to prevent the swallowing of suspected contraband violated the unreasonable-search-and-seizure protection in Article 1, Section 11 of the Indiana Constitution. Applying the Litchfield totality-of-the-circumstances framework and adopting a general rule from Conwell, the court ordered suppression of the evidence and reversed the denial of the defendant's motion to suppress.

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Justice Dickson; Chief Justice Shepard; Justice Sullivan; Justice Boehm; Justice Rucker
JURISDICTION	Indiana
DECIDED	June 21, 2007
DOCKET	49S05-0702-CR-68
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant sought interlocutory appellate review of the denial of his motion to suppress evidence. The Indiana Court of Appeals affirmed, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	Under Article 1, section 11 of the Indiana Constitution, the reasonableness of a search or seizure is assessed under the totality of the circumstances by balancing the degree of concern, suspicion, or knowledge of a violation; the degree of intrusion on the citizen's ordinary activities; and the extent of law-enforcement needs.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion; precedential and binding on Indiana courts.
PARTIES	John Grier v. State of Indiana

TOPICS

- search and seizure
- suppression of evidence
- criminal procedure
- fourteenth amendment
- appellate procedure

PRACTICE AREAS

Criminal procedure

Constitutional law

Search and seizure

Evidence and suppression

QUESTIONS PRESENTED

1. Whether police use of physical force against a detainee's throat to prevent the detainee from swallowing suspected contraband violated Article 1, section 11 of the Indiana Constitution.
2. Whether the evidence obtained through that conduct should be suppressed.

HOLDINGS

1. The application of force to a detainee's throat to prevent the swallowing of suspected contraband violates Article 1, section 11's prohibition against unreasonable search and seizure.
2. Evidence obtained as a result of the unconstitutional application of physical force to Grier's throat must be suppressed.

KEY QUOTATIONS

"The application of force to a detainee's throat to prevent swallowing of suspected contraband violates the constitutional prohibitions against unreasonable search and seizure." (445)

"We therefore hold that the trial court should have granted the defendant's motion to suppress evidence obtained by the application of physical force to his throat to prevent him from swallowing it." (445)

FACTUAL BACKGROUND

Police stopped Grier after observing that his vehicle had an expired license plate. During the encounter, an officer observed that Grier was sweating, crying, reluctant to answer questions, gagging, and holding a clear plastic bag in his mouth that was covered in blood and saliva. When Grier refused to spit out the bag, the officer grabbed him by the throat and applied pressure for approximately fifteen to twenty seconds to prevent him from swallowing it, after which Grier spit the bag onto the sidewalk.

PROCEDURAL HISTORY

Grier was charged with possession of three or more grams of cocaine, a Class C felony. The trial court denied his motion to suppress evidence obtained after a police officer grabbed his throat to prevent him from swallowing a plastic bag suspected of containing cocaine and certified the ruling for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed, after which the Supreme Court granted transfer because the decision might conflict with *Conwell v. State*.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to grant Grier's motion to suppress evidence obtained through the application of physical force to his throat and to conduct further proceedings consistent with the opinion.

CASES CITED

- State v. Gerschoffer, 763 N.E.2d 960, 965 (Ind. 2002)
- Holder v. State, 847 N.E.2d 930, 940 (Ind. 2006)
- Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005)
- Trimble v. State, 842 N.E.2d 798, 803 (Ind. 2006)
- Conwell v. State, 714 N.E.2d 764, 768 (Ind. Ct. App. 1999)
- Adams v. State, 762 N.E.2d 737, 745-46 (Ind. 2002)
- Jones v. State, 655 N.E.2d 49, 54 (Ind. 1995)
- Brown v. State, 653 N.E.2d 77, 80 (Ind. 1995)
- Shultz v. State, 742 N.E.2d 961, 966 (Ind. Ct. App. 2001)
- Grier v. State, 855 N.E.2d 1043 (Ind. Ct. App. 2006)

OPINION

DICKSON, J.

868 N.E.2d 443 (2007) John GRIER, Appellant (Defendant below), v. STATE of Indiana, Appellee (Plaintiff below). No. 49S05-0702-CR-68. Supreme Court of Indiana. June 21, 2007. *444 Joel M. Schumm, Indianapolis, IN, Attorney for Appellant. Steve Carter, Attorney General of Indiana, Michael Gene Worden, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee.

On Petition To Transfer from the Indiana Court of Appeals, No. 49A05-0512-CR-691. DICKSON, Justice. Charged with possession of three or more grams of cocaine, a class C felony, the defendant sought to suppress evidence obtained when police grabbed his throat to prevent him from swallowing a plastic bag suspected of containing cocaine.

The trial court denied his motion but certified the ruling for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed. Grier v. State, 855 N.E.2d 1043 (Ind.Ct.App.2006). Noting that its opinion may be in conflict with Conwell v. State, 714 N.E.2d 764 (Ind.Ct.App.1999), we granted transfer.

On August 26, 2005, police spotted the defendant driving with an expired license plate. After directing the defendant to pull over and stop, the officer approached the vehicle and observed the defendant sweating, crying, reluctant to speak in response to questions, and gagging after being ordered out of his car. When the defendant opened his mouth on the officer's command, the officer noticed a clear plastic bag in it, covered in blood and saliva, but the defendant refused to spit it out.

Suspecting that the bag contained cocaine, the officer grabbed the defendant by the throat with one hand and applied enough pressure to inhibit the defendant's ability to swallow. After about fifteen to twenty seconds, the defendant spit the bag onto the sidewalk.

The defendant contends that, by grabbing his throat, the police officer violated Indiana's constitutional prohibition declaring: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated;..." Ind. Const. art. 1, § 11. He asserts that this police conduct likewise violated the Fourth and Fourteenth Amendments to the federal constitution and Article 1, § 15 of the Indiana Constitution.

We address only the defendant's Section 11 claim, which is dispositive. We construe Section 11 liberally in favor of protecting individuals from unreasonable intrusions on their privacy. *State v. Gerschoffer*, 763 N.E.2d 960, 965 (Ind.2002). But respect must also be accorded our citizens' concerns for safety, security, and protection. *Holder v. State*, 847 N.E.2d 930, 940 (Ind.2006).

In assessing the reasonableness of a search or seizure under the totality of the circumstances, consideration must be given both to the interests of the individual affected and those of law enforcement. In particular, we consider: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs."

Litchfield v. State, 824 N.E.2d 356, 361 (Ind. 2005), quoted in *Holder*, 847 N.E.2d at 940; *Trimble v. State*, 842 N.E.2d 798, 803 (Ind.2006). This assessment usually requires an evaluation of the specific facts and circumstances of the case. But when a Section 11 challenge is directed against police conduct in grabbing a person's throat to prevent *445 the person from swallowing suspected contraband, there are similar, common considerations relevant to the second and third factors.

In such situations, a general rule may be formulated. In *Conwell*, the Court of Appeals confronted a similar police chokehold case and addressed a challenge brought under the Search and Seizure Clause of the federal Fourth Amendment.

The court there noted that the application of force to a person's throat invaded the person's bodily integrity, posed great health and safety risks to the detainee, and also was likely to incite violent resistance, thus presenting additional risks to the safety of both the detainee and the investigating officer(s). *Conwell*, 714 N.E.2d at 768. And *Conwell* concluded that the need of police to preserve evidence and to protect the person from harmful ingestion were relatively insubstantial, largely because the person could have been taken into custody where police could have allowed the drugs "to pass through his system" or be "absorbed into his bloodstream," permitting the evidence to have been taken "in a less harmful and violent manner."

Id. The court held that preservation of evidence did not justify "the use of such violent and dangerous means." *Id.*[2] We would add that the danger of gagging or choking may also be

alleviated by common therapeutic maneuvers that serve to expel throat obstructions.

The above analysis is particularly relevant to the second and third Litchfield factors relating to the degree of intrusion and the extent of law enforcement needs. Thus we find the general rule from Conwell, although resulting from a claim under the Fourth Amendment, is equally compelled under Section 11.

The application of force to a detainee's throat to prevent swallowing of suspected contraband violates the constitutional prohibitions against unreasonable search and seizure. By grabbing the defendant's throat to prevent him from swallowing the suspected bag of drugs, the police violated this constitutional protection. Evidence obtained as a result of an unconstitutional search must be suppressed.

Adams v. State, 762 N.E.2d 737, 745-46 (Ind.2002); Jones v. State, 655 N.E.2d 49, 54 (Ind.1995); Brown v. State, 653 N.E.2d 77, 80 (Ind.1995); Shultz v. State, 742 N.E.2d 961, 966 (Ind.Ct.App.2001). We therefore hold that the trial court should have granted the defendant's motion to suppress evidence obtained by the application of physical force to his throat to prevent him from swallowing it.

We reverse the denial of the defendant's motion to suppress and remand to the trial court for further proceedings consistent with this opinion. SHEPARD, C.J., and SULLIVAN, BOEHM, and RUCKER, JJ., concur. NOTES [2] In the present case, the Court of Appeals sought to distinguish Conwell, noting differences in the extent of force applied by police in the two cases and citing to its "own cursory research" regarding the risk of injury from ingesting illegal drugs.

Grier, 855 N.E.2d at 1047 n. 2. We favor the bright-line rule expressed in Conwell.